

Conference Engrossed

State of Arizona  
House of Representatives  
Forty-sixth Legislature  
Second Regular Session  
2004

CHAPTER 254

# HOUSE BILL 2184

AN ACT

AMENDING SECTIONS 5-323 AND 5-395.03, ARIZONA REVISED STATUTES; AMENDING TITLE 5, CHAPTER 3, ARTICLE 10, ARIZONA REVISED STATUTES, BY ADDING SECTION 5-398.02; AMENDING TITLE 28, CHAPTER 4, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 28-1303; AMENDING SECTIONS 28-1304 AND 41-1651, ARIZONA REVISED STATUTES; RELATING TO DRIVING OR OPERATING UNDER THE INFLUENCE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 5-323, Arizona Revised Statutes, is amended to  
3 read:

4 5-323. Disposition of fees

5 A. The registration fees received under this chapter for the numbering  
6 of watercraft shall be deposited, pursuant to sections 35-146 and 35-147, in  
7 a special fund to be known as the watercraft licensing fund. Such fund is  
8 to be used by the department for administering and enforcing the provisions  
9 of this chapter and providing an information and education program relating  
10 to boating and boating safety.

11 B. Each month monies received from the license taxes imposed under  
12 section 5-321 in the amount of forty-five per cent of such revenues shall be  
13 transferred to the watercraft licensing fund. Such monies are subject to  
14 legislative appropriation. ~~Monies in the fund from license taxes which~~  
15 ~~exceed two hundred ninety thousand dollars in a fiscal year shall be used for~~  
16 ~~the education program relating to boating and boating safety.~~

17 C. Each month monies received from the license taxes imposed under  
18 section 5-321 in the amount of fifty-five per cent of such revenues shall be  
19 deposited by the Arizona game and fish department as follows:

20 1. Fifteen per cent to the state lake improvement fund to be used as  
21 prescribed by section 5-382.

22 2. Eighty-five per cent to the law enforcement and boating safety fund  
23 to be used as prescribed by section 5-383.

24 Sec. 2. Section 5-395.03, Arizona Revised Statutes, is amended to  
25 read:

26 5-395.03. Test for alcohol concentration or drug content;  
27 refusal; civil penalty

28 A. Any person who operates a motorized watercraft that is underway  
29 within this state shall submit, subject to section 4-244, paragraph 34,  
30 section 5-395 or section 5-396, to a test or tests of the person's blood,  
31 breath, urine or other bodily substance for the purpose of determining  
32 alcohol concentration or drug content if the person is arrested for any  
33 offense arising out of acts alleged to have been committed in violation of  
34 this chapter or section 4-244, paragraph 34 while the person was operating  
35 or in actual physical control of a motorized watercraft that was underway  
36 while under the influence of intoxicating liquor or drugs. The test or tests  
37 chosen by the law enforcement agency shall be administered at the direction  
38 of a law enforcement officer having reasonable grounds to believe the person  
39 to have been operating or in actual physical control of a motorized  
40 watercraft that is underway within this state while under the influence of  
41 intoxicating liquor or drugs, or if the person is under twenty-one years of  
42 age, with spirituous liquor in the person's body.

43 B. Following an arrest a violator shall be requested to submit to and  
44 successfully complete any test or tests prescribed by subsection A of this

1 section, and if the violator refuses the violator shall be informed that he  
2 THE VIOLATOR is subject to a civil ~~sanction~~ PENALTY.

3 C. A person who refuses any test or tests prescribed by subsection A  
4 of this section is subject to a civil penalty of seven hundred fifty dollars  
5 AND SHALL PAY AN ADDITIONAL CIVIL PENALTY OF FIVE HUNDRED DOLLARS TO BE  
6 DEPOSITED BY THE STATE TREASURER IN THE PRISON CONSTRUCTION AND OPERATIONS  
7 FUND ESTABLISHED BY SECTION 41-1651. THE ADDITIONAL CIVIL PENALTY OF FIVE  
8 HUNDRED DOLLARS IS NOT SUBJECT TO ANY SURCHARGE. IF THE ADDITIONAL CIVIL  
9 PENALTY IS IMPOSED BY THE SUPERIOR COURT OR A JUSTICE COURT, THE COURT SHALL  
10 TRANSMIT THE AMOUNT COLLECTED FOR THE ADDITIONAL CIVIL PENALTY TO THE COUNTY  
11 TREASURER. IF THE ADDITIONAL CIVIL PENALTY IS IMPOSED BY A MUNICIPAL COURT,  
12 THE COURT SHALL TRANSMIT THE AMOUNT COLLECTED FOR THE ADDITIONAL CIVIL  
13 PENALTY TO THE CITY TREASURER. THE CITY OR COUNTY TREASURER SHALL TRANSMIT  
14 THE MONIES RECEIVED PURSUANT TO THIS SUBSECTION TO THE STATE TREASURER.

15 D. If a person under arrest refuses to submit to the test designated  
16 by the law enforcement agency as provided in subsection A of this section  
17 none shall be given, except as provided in section 5-395, subsection J or  
18 pursuant to a search warrant.

19 Sec. 3. Title 5, chapter 3, article 10, Arizona Revised Statutes, is  
20 amended by adding section 5-398.02, to read:

21 5-398.02. Records of convictions and judgments; abstract of  
22 record; reports

23 A. EACH MAGISTRATE, JUDGE OR HEARING OFFICER OF A COURT SHALL:

24 1. KEEP OR CAUSE TO BE KEPT A RECORD OF EACH VIOLATION OF THIS ARTICLE  
25 DEPOSITED WITH OR PRESENTED TO THE COURT.

26 2. KEEP A RECORD OF EACH OFFICIAL ACTION BY THE COURT IN REFERENCE TO  
27 EACH VIOLATION OF THIS ARTICLE DEPOSITED WITH OR PRESENTED TO THE COURT,  
28 INCLUDING BUT NOT LIMITED TO A RECORD OF:

29 (a) EACH CONVICTION, FORFEITURE OF BAIL OR DEPOSIT OR JUDGMENT OF  
30 ACQUITTAL.

31 (b) THE AMOUNT OF THE PENALTY, FINE OR FORFEITURE RESULTING FROM EACH  
32 COMPLAINT DEPOSITED WITH OR PRESENTED TO THE COURT.

33 B. WITHIN TEN DAYS AFTER THE CONVICTION, JUDGMENT OR FORFEITURE OF  
34 BAIL OR DEPOSIT OF A PERSON ON A CHARGE OF VIOLATING THIS ARTICLE, EACH  
35 MAGISTRATE OF THE COURT OR CLERK OF THE COURT OF RECORD IN WHICH THE  
36 CONVICTION OR JUDGMENT WAS HAD OR BAIL OR DEPOSIT WAS FORFEITED SHALL PREPARE  
37 AND IMMEDIATELY FORWARD TO THE DEPARTMENT OF TRANSPORTATION AN ABSTRACT OF  
38 THE RECORD OF THE COURT COVERING THE CASE IN WHICH THE PERSON EITHER:

39 1. WAS CONVICTED.

40 2. WAS ADJUDICATED TO HAVE COMMITTED A VIOLATION.

41 3. FORFEITED BAIL OR DEPOSIT.

42 C. THE PERSON REQUIRED TO PREPARE THE ABSTRACT SHALL CERTIFY THAT IT  
43 IS TRUE AND CORRECT.

44 D. THE ABSTRACT SHALL BE MADE ON A FORM FURNISHED OR IN A MANNER  
45 PRESCRIBED BY THE DEPARTMENT OF TRANSPORTATION AND SHALL INCLUDE:

- 1           1. THE NAME AND ADDRESS OF THE PARTY CHARGED.
- 2           2. THE NUMBER, IF ANY, OF THE DRIVER LICENSE, PERMIT OR IDENTIFICATION
- 3 LICENSE OF THE PARTY CHARGED.
- 4           3. THE NATURE OF THE OFFENSE OR VIOLATION.
- 5           4. THE DISPOSITION OR WHETHER BAIL OR DEPOSIT WAS FORFEITED.
- 6           5. THE AMOUNT OF THE FINE, PENALTY OR FORFEITURE.
- 7           E. THE DEPARTMENT OF TRANSPORTATION SHALL KEEP ALL ABSTRACTS RECEIVED
- 8 UNDER THIS SECTION FOR INSPECTION AS REQUIRED BY LAW.

9           Sec. 4. Title 28, chapter 4, article 1, Arizona Revised Statutes, is  
10 amended by adding section 28-1303, to read:

11           28-1303. Oversight council on driving or operating under the  
12 influence abatement

13           A. THE OVERSIGHT COUNCIL ON DRIVING OR OPERATING UNDER THE INFLUENCE  
14 ABATEMENT IS ESTABLISHED CONSISTING OF THE FOLLOWING TEN MEMBERS:

- 15           1. THE DIRECTOR OF THE DEPARTMENT OF PUBLIC SAFETY OR THE DIRECTOR'S
- 16 DESIGNEE.
- 17           2. THE ASSISTANT DIRECTOR FOR THE MOTOR VEHICLE DIVISION OF THE
- 18 DEPARTMENT OF TRANSPORTATION OR THE ASSISTANT DIRECTOR'S DESIGNEE.
- 19           3. THE DIRECTOR OF THE GOVERNOR'S OFFICE OF HIGHWAY SAFETY.
- 20           4. ONE MEMBER OF THE PUBLIC WHO IS APPOINTED BY THE GOVERNOR.
- 21           5. ONE MEMBER OF THE PUBLIC WHO IS APPOINTED BY THE SPEAKER OF THE
- 22 HOUSE OF REPRESENTATIVES.
- 23           6. ONE MEMBER OF THE PUBLIC WHO IS APPOINTED BY THE PRESIDENT OF THE
- 24 SENATE.
- 25           7. ONE MUNICIPAL LAW ENFORCEMENT MEMBER WHO IS APPOINTED BY THE
- 26 GOVERNOR ON THE RECOMMENDATION OF AN ARIZONA ASSOCIATION OF CHIEFS OF POLICE.
- 27           8. ONE COUNTY LAW ENFORCEMENT MEMBER WHO IS APPOINTED BY THE GOVERNOR
- 28 ON THE RECOMMENDATION OF AN ARIZONA COUNTY SHERIFF'S ASSOCIATION.
- 29           9. ONE CITY PROSECUTOR WHO IS APPOINTED BY THE GOVERNOR ON THE
- 30 RECOMMENDATION OF THE ARIZONA PROSECUTING ATTORNEY'S ADVISORY COUNCIL.
- 31           10. ONE COUNTY ATTORNEY WHO IS APPOINTED BY THE GOVERNOR ON THE
- 32 RECOMMENDATION OF THE ARIZONA PROSECUTING ATTORNEY'S ADVISORY COUNCIL.

33           B. MEMBERS APPOINTED PURSUANT TO SUBSECTION A, PARAGRAPHS 4, 5, 6, 7,  
34 8, 9 AND 10 OF THIS SECTION SERVE THREE YEAR STAGGERED TERMS.

35           C. MEMBERS APPOINTED PURSUANT TO SUBSECTION A, PARAGRAPHS 1, 2 AND 3  
36 OF THIS SECTION SHALL SERVE AS ADVISORY NONVOTING MEMBERS OF THE COUNCIL.

37           D. THE VOTING MEMBERS OF THE COUNCIL SHALL ANNUALLY ELECT A  
38 CHAIRPERSON FROM AMONG THE MEMBERS. A MEMBER SHALL NOT SERVE CONSECUTIVE  
39 TERMS AS CHAIRPERSON.

40           E. MEMBERS OF THE COUNCIL ARE NOT ELIGIBLE TO RECEIVE COMPENSATION,  
41 BUT MEMBERS WHO ARE APPOINTED PURSUANT TO SUBSECTION A, PARAGRAPHS 4, 5, 6,  
42 7, 8, 9 AND 10 OF THIS SECTION ARE ELIGIBLE FOR REIMBURSEMENT OF EXPENSES  
43 PURSUANT TO TITLE 38, CHAPTER 4, ARTICLE 2.

1 F. THE OVERSIGHT COUNCIL ON DRIVING OR OPERATING UNDER THE INFLUENCE  
2 ABATEMENT MAY USE THE FACILITIES FOR MEETING AND THE STAFF OF THE ARIZONA  
3 CRIMINAL JUSTICE COMMISSION.

4 G. THE OVERSIGHT COUNCIL ON DRIVING OR OPERATING UNDER THE INFLUENCE  
5 ABATEMENT MAY ENTER INTO INTERAGENCY AGREEMENTS WITH THE ARIZONA CRIMINAL  
6 JUSTICE COMMISSION AND OTHER AGENCIES FOR AGENCY BUSINESS.

7 H. THE COUNCIL SHALL:

8 1. MAKE GRANTS FROM THE DRIVING UNDER THE INFLUENCE ABATEMENT FUND  
9 ESTABLISHED BY SECTION 28-1304 TO POLITICAL SUBDIVISIONS AND TRIBAL  
10 GOVERNMENTS THAT APPLY FOR MONIES FOR ENFORCEMENT PURPOSES, PROSECUTORIAL AND  
11 JUDICIAL ACTIVITIES AND ALCOHOL ABUSE TREATMENT SERVICES RELATED TO  
12 PREVENTING AND ABATING DRIVING OR OPERATING UNDER THE INFLUENCE OCCURRENCES  
13 IN A MOTOR VEHICLE OR A MOTORIZED WATERCRAFT AS DEFINED IN SECTION 5-301.

14 2. MAKE GRANTS FROM THE DRIVING UNDER THE INFLUENCE ABATEMENT FUND  
15 ESTABLISHED BY SECTION 28-1304 TO INNOVATIVE PROGRAMS THAT USE EMERGING  
16 TECHNOLOGIES TO EDUCATE, PREVENT OR DETER OCCURRENCES OF DRIVING OR OPERATING  
17 UNDER THE INFLUENCE IN A MOTOR VEHICLE OR A MOTORIZED WATERCRAFT.

18 3. RECEIVE QUARTERLY REPORTS FROM THE ENTITIES RECEIVING GRANTS AND  
19 EVALUATE THEIR EFFECTIVENESS. THE COUNCIL MAY MAKE ADDITIONAL GRANTS TO THE  
20 RECIPIENTS AND OVERSEE THE PROGRESS OF THOSE PROGRAMS.

21 4. ON OR BEFORE DECEMBER 1 OF EACH YEAR, SUBMIT A WRITTEN REPORT ON  
22 THE EFFECTIVENESS OF THE GRANTS PROVIDED IN REDUCING THE INCIDENCE OF DRIVING  
23 OR OPERATING UNDER THE INFLUENCE TO THE GOVERNOR, THE SPEAKER OF THE HOUSE  
24 OF REPRESENTATIVES, THE PRESIDENT OF THE SENATE AND SHALL PROVIDE A COPY OF  
25 THIS REPORT TO THE SECRETARY OF STATE AND THE DIRECTOR OF THE ARIZONA STATE  
26 LIBRARY, ARCHIVES AND PUBLIC RECORDS.

27 Sec. 5. Section 28-1304, Arizona Revised Statutes, is amended to read:

28 28-1304. Driving under the influence abatement fund

29 A. The driving under the influence abatement fund is established  
30 consisting of monies deposited pursuant to section 28-1382, subsection D,  
31 paragraph 3 and subsection F, paragraph 3 and section 28-1383, subsection J,  
32 paragraph 2.

33 B. The OVERSIGHT COUNCIL ON driving OR OPERATING under the influence  
34 abatement ~~council~~ established by section 28-1303 shall administer the fund.

35 C. ~~One-half~~ TWENTY-FIVE PER CENT of the monies deposited in the fund  
36 shall be used for grants for ~~pilot~~ INNOVATIVE programs pursuant to section  
37 28-1303, subsection ~~F~~ H, paragraph 2 and ~~one-half~~ SEVENTY PER CENT of the  
38 monies deposited in the fund shall be used for grants to political  
39 subdivisions AND TRIBAL GOVERNMENTS pursuant to section 28-1303, subsection  
40 ~~F~~ H, paragraph ~~5~~ 1.

41 D. NOT MORE THAN FIVE PER CENT OF THE MONIES DEPOSITED IN THE FUND  
42 SHALL BE USED FOR ADMINISTRATIVE PURPOSES OF THE OVERSIGHT COUNCIL ON DRIVING  
43 OR OPERATING UNDER THE INFLUENCE ABATEMENT.

44 ~~D~~ E. Monies in the fund are:

45 1. Continuously appropriated.

1           2. Exempt from the provisions of section 35-190 relating to lapsing  
2 of appropriations.

3           ~~E.~~ F. On notice from the OVERSIGHT COUNCIL ON driving OR OPERATING  
4 under the influence abatement council, the state treasurer shall invest and  
5 divest monies in the fund as provided in section 35-313, and monies earned  
6 from investments shall be credited to the fund.

7           Sec. 6. Section 41-1651, Arizona Revised Statutes, is amended to read:

8           41-1651. Prison construction and operations fund

9           The prison construction and operations fund is established consisting  
10 of monies received pursuant to sections 5-395.01, 5-395.03, 5-396, 5-397,  
11 28-1381, 28-1382, 28-1383, 28-8284, 28-8286, 28-8287 and 28-8288. The state  
12 department of corrections shall administer the fund. Monies in the fund are  
13 subject to legislative appropriation and shall be used to pay for any costs  
14 related to prison overcrowding and department support and maintenance.

APPROVED BY THE GOVERNOR MAY 20, 2004.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 20, 2004.

HOUSE FINAL PASSAGE  
as per Joint Conference

Passed the House May 12, 2004,

by the following vote: 36 Ayes,

20 Nays, 4 Not Voting

Jake Flake  
Speaker of the House

Norman L. Moore  
Chief Clerk of the House

SENATE FINAL PASSAGE  
as per Joint Conference

Passed the Senate May 13, 2004,

by the following vote: 26 Ayes,

0 Nays, 4 Not Voting

Klu Bennett  
President of the Senate

Charmaine Bellington  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor

this 14<sup>th</sup> day of May, 2004,

at 11:07 o'clock a. M.

Jennifer Uparra  
Secretary to the Governor

Approved this 20 day of

May, 2004,

at 2<sup>30</sup> o'clock P. M.

Jt. Appl.  
Governor of Arizona

H.B. 2184

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 20 day of May, 2004,

at 4:21 o'clock P. M.

Janice L. Brewer  
Secretary of State

Passed the House February 25, 2004

by the following vote: 60 Ayes,

0 Nays, 0 Not Voting

Jake Flake  
Speaker of the House

Norman L. Moore  
Chief Clerk of the House

Passed the Senate April 13, 2004

by the following vote: 30 Ayes,

0 Nays, 0 Not Voting

Klu Bennett  
President of the Senate

Charmian Billington  
Secretary of the Senate

**EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR**

This Bill was received by the Governor this

\_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary to the Governor

Approved this \_\_\_\_\_ day of

\_\_\_\_\_, 20\_\_\_\_,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Governor of Arizona

**EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE**

This Bill was received by the Secretary of State

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Secretary of State

H.B. 2184